

IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA.

CWP No. 1242 of 2005.

Decided on: 24.4.2007

Dila Ram ... Petitioner.

Versus.

State of H.P & ors. Respondents.

Coram:

The Hon'ble Mr. Justice Deepak Gupta, Judge.

The Hon'ble Mr. Justice Surinder Singh, Judge.

Whether approved for reporting?

For the petitioner: Mr. T.S.Chauhan, Advocate.

For the respondents: Mr. M.S.Chandel, AG with Mr. R.M.Bisht, Dy.AG,
for respondents 1 to 3.

Mr. Sunit Goel, Advocate, for respondent No.4.

Mr. N.K.Sood, Advocate, for respondent No.5.

Mr. Shrawan Dogra, Advocate, for respondent
No.6.

Deepak Gupta, J (Oral).

The petitioner applied for grant of mining lease to establish a stone-crusher in village Khural, Tehsil Sundernagar, District Mandi, H.P. After completing all codal formalities, the respondent – State granted mining lease to the petitioner qua khasra No. 420, 420/1 in mauja Khural, Tehsil Sundernagar, District Mandi. This permission was granted after a letter Annexure P7 had been sent by the Mining Officer, Mandi to the Executive Engineer of respondent No.5, Bhakra Beas Management Board (BBMB) informing them that the State intended to grant permission to the petitioner to run a stone-crusher on khasra No.420 and 4201/1 in village Khural. It was mentioned that since the said land is in possession of BBMB

(respondent No.5), no objection be given in this regard. A certificate was issued by the SDO of the respondent No.5 stating that he has no objection to the lifting of aggregate, sand and stones from the aforesaid khasra numbers.

It would be pertinent to mention that the petitioner thereafter established the stone-crusher. According to the petitioner, he is collecting stones from the river bed and crushing them and in fact no mining activities had been done. The petitioner received a notice on 18.8.2005, Annexure P-4, in which it was alleged that the crusher of the petitioner is posing threat to the Dehar Power House and the stone-crusher has been installed in the land of B.B.M.B and why the crusher be not ordered to be shut down. The petitioner replied to the show cause notice and stated that the stone-crusher has been set up after obtaining no objection certificate from the B.B.M.B. authorities.

The petitioner by means of this writ petition has asked for quashing of the notice and also prayed that respondents No.1 to 3 be directed to register the stone-crusher.

Replies were filed by the respondents and the main objection of the respondent- State is that it was reported to the respondent- State by the BBMB (respondent No.5) that the installation of the stone-crusher which is 300 yards up-stream of the Dehar Power House is a security threat to the Power House especially since the stone-crusher unit is using the road going through the power house. However, according to the respondent- State, the land in question is owned by the State though it was in possession of the respondent No.5.

On the other hand, the stand of respondent No.5 is that the land is owned by it and the State had no authority to grant mining lease over the said land. It was further submitted that no objection was given only for the purpose of lifting the sand aggregate stones etc and not for setting up the stone-crusher. The stand of the BBMB is that since the Dehar Power

House is a project of great importance to the country, the setting up of the stone-crusher near the Power House is a great security threat.

We had earlier heard the petition on 6.12.2006 in detail. At that time the petitioner had given an undertaking that he would not use the road leading to the Nation Highway-21 to his stone-crusher through the Dehar Power House and would instead use another road which would not go through the Power House and he would have to cover a distance of almost 7 kms. Keeping in view the undertaking given by respondent No.5, we passed the following order on 6.12.2006:

“We have heard the learned counsel for the parties at some length. The main objection of the respondents to the stone crusher set up by the petitioner is the perceived security threat to the Dehar Power House by movement of vehicular traffic from the stone crusher of the petitioner to the National Highway via the Dehar Power House.

The petitioner has given an undertaking before us that he will not use the road leading from the National Highway to his stone crusher via the Dehar Power House and shall use a 7 kms long road which goes from Khural to National Highway-21 and ends at about 2 kms. upwards of Slappar towards Mandi.

We, therefore, direct that the Superintendent of Police, Mandi, may personally visit the spot and after visiting the stone crusher of the petitioner as also the road which the petitioner proposes to use, the Superintendent of Police, Mandi shall submit a report to this Court as to whether the security threat to the Dehar Power House still exists or not. The report be submitted within two months from today. The Superintendent of Police, before visiting the spot shall issue notice to the in-charge BBMB Dehar Power House, the Additional Director of Police (CID) HP Shimla and the petitioner. They may remain present on the spot.

List on 20th March, 2007. Dasti Copy.”

In response to the said order, the Superintendent of Police has filed his affidavit in which he has averred as follows:-

“That after the spot visit the undersigned is of the opinion that, if the petitioner does not use the road leading from the

National Highway to his stone crusher via the Dehar Power House and uses 7 Kms long road which goes from Khural to National Highway 21 and ends at about two Kms upwards of Slapper towards Mandi, as mentioned by the petitioner in his petition, then there is no security threat to the Dehar Power House.”

We would have thought that once the Superintendent of Police had filed the above affidavit, the matter should have ended there. However, Shri N.K.Sood, learned counsel for respondent No.5 insists that setting up of the stone-crusher is a security threat on various grounds including the ground that migrant labours will be used by the petitioner whose antecedents are not verified.

Keeping in view the affidavit of the Superintendent of Police, we feel that the stand of the respondent No.5 does not appear to be correct. We cannot lose sight of the fact that permission for mining lease was granted in favour of the petitioner only after the officer of respondent No.5 issued a ‘No Objection Certificate’. Thereafter, the petitioner invested a huge amount of money and set up a stone-crusher. Initially, he was using the road leading from the National Highway to the stone-crusher through the Dehar Power House only. This road was less than 1 km in length. Even we had felt that no stranger should be permitted to use the road going through the power house. Thereafter the petitioner had given an undertaking that he will use a 7 kms. long road as mentioned above. Now there is no security threat to the power house.

We, therefore, allow this writ petition and permit the petitioner to operate the stone-crusher after completing all other formalities in accordance with law. The registration of his stone-crusher will not be denied only on the ground of perceived security threat. We also direct that the petitioner shall submit the names and addressees of his employees to the Superintendent of Police, Mandi as well as to the Project Security

Officer, BBMB, Sundernagar. They can verify the antecedents of the workmen and if they find that there is any security threat, they can bring it to the notice of the petitioner who can terminate the services of the said workman.

We hasten to add that we have not decided the question as to whether the land for which mining lease has been granted belongs to the State or respondent No.5. If the respondent No.5 has any other grievance or objection, it can ventilate the same and seek redressal of its grievances in an appropriate court or forum.

The petition is disposed of in the aforesaid terms. No order as to costs.

(Deepak Gupta), J.

April 24, 2007.

(Surinder Singh),J.'

s.